

AO 241 (Rev. 5/85)

FILED

PETITION UNDER 28 USC § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

**United States District Court**JULY 16 P 12:18  
MASSACHUSETTSName  
THOMAS MACLEODPrisoner No.  
W-56485

Case No.

Place of Confinement

DISTRICT COURT

DISTRICT OF MASS

MCI-WALPOLE  
P.O. BOX 100, SOUTH WALPOLE, MA. 02071

Name of Petitioner (include name under which convicted)

Name of Respondent (authorized person having custody of petitioner)

THOMAS MACLEOD

V. DAVID NOLAN

The Attorney General of the State of:  
MASSACHUSETTS**PETITION**

1. Name and location of court which entered the judgment of conviction under attack SUFFOLK COUNTY SUP.  
90 DEVONSHIRE STREET, BOSTON, MA.
2. Date of judgment of conviction MAY 16, 1999 (also NOVEMBER 1, 2000)
3. Length of sentence TEN (10) YEARS
4. Nature of offense involved (all counts) BREAKING AND ENTERING IN THE DAY TIME,  
WITH INTENT TO COMMIT A FELONY

**HABITUAL OFFENDER**

5. What was your plea? (Check one)

- (a) Not guilty   
 (b) Guilty   
 (c) Nolo contendere

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

I NEVER KNOWINGLY PLEAD GUILTY TO THE HABITUAL PORTION OR

INDICTMENT.

6. If you pleaded not guilty, what kind of trial did you have? (Check one)
 

(a) Jury   
 (b) Judge only
7. Did you testify at the trial?  
 Yes  No
8. Did you appeal from the judgment of conviction?  
 Yes  No

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9. If you did appeal, answer the following:

(a) Name of court MASSACHUSETTS APPEALS COURT

(b) Result DENIED

(c) Date of result and citation, if known UNKNOWN

(d) Grounds raised \_\_\_\_\_

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

(1) Name of court MASSACHUSETTS SUPREME JUDICIAL COURT

(2) Result FURTHER APPEALATE REVIEW DENIED

(3) Date of result and citation, if known 6-30-04, unpublished

(4) Grounds raised Ineffective assistance of counsel, and lack  
of a jury trial on the habitual (enhancement) indictment.

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

(1) Name of court \_\_\_\_\_

(2) Result \_\_\_\_\_

(3) Date of result and citation, if known \_\_\_\_\_

(4) Grounds raised \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?

Yes  No 

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court SUFFOLK SUPERIOR COURT

(2) Nature of proceeding MOTION FOR NEW TRIAL, Mass. Crim. P.R. 30(b)

(3) Grounds raised Violation of my Constitutional (U.S.) right to a jury  
trial on the habitual indictment. And ineffective assistance of

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course).

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes  No

(5) Result DENIED(6) Date of result MAY 15, 2003

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?  
 Yes  No

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes  No (2) Second petition, etc. Yes  No (d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

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12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL

U.S.C. SIXTH AMENDMENT

Supporting FACTS (state briefly without citing cases or law) The guilty plea was coerced by counsel, and he was ineffective.

B. Ground two: DENIED A JURY TRIAL ON THE HABITUAL PORTION OF THE INDICTMENT, FIFTH AMENDMENT RIGHT U. S. C.

Supporting FACTS (state briefly without citing cases or law): DID NOT RECIEVE A JURY TRIAL ON THE HABITUAL INDICMENT PORTION OF MY PLEA

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C. Ground three: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_D. Ground four \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?  
Yes  No 

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing DAVID DONAHUE, ESQ.

(b) At arraignment and plea DAVID DONAHUE, ESO.

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(c) At trial DAVID DONAHUE, ESQ.(d) At sentencing DAVID DONAHUE, ESQ.(e) On appeal ALBA DOTO BACCARI, ESQ.(f) In any post-conviction proceeding ALBA DOTO BACARRI(g) On appeal from any adverse ruling in a post-conviction proceeding ALBA DOTO BACCARI,

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes  No 

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes  No 

(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_

(b) Give date and length of the above sentence: \_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes  No 

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

THOMAS MACLEOD  
P.O. BOX 100I declare under penalty of perjury that the foregoing is true and correct. Executed on SOUTH WALPOLE, MJuly 19, 2004  
(date)Paul Nell

Signature of Petitioner